IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) NO.240 OF 2006

Mrs. Anjali Mukul Gadgil,
Hindu, aged 35 years,
Residing at Sanatan Ashram,
Ramnathi, Ponda, Goa. ... Applicant

versus

1. State of Goa,
   through P.P.

2. Mr. Mahendra Pandit,
   Hindu, adult, residing at
   Chandra Niwas, Ramwadi,
   Tilak Chowk, Kalyan(West),
   Tal. Kalyan.Dist.Thane(M.S.) ... Respondents

Mr. R. D. Kesarkar, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State.

Mr. Digambar D. Naik, Advocate for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 8TH FEBRUARY, 2007.

ORAL ORDER

This petition is by the complainant in C. C. No. 49/P/05/D and assails the Order dated 12-4-2006 of the learned Additional Sessions Judge, Panaji, by which the learned Additional Sessions Judge has quashed the process issued against the respondent no.2/accused under Sections 499/500 I.P.C.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the complaint. Heard the learned Counsel on behalf of both the parties.

3. The complainant had filed the said complaint stating that she and her family are the followers of Hindu religion and were following the spiritual practices under the guidance of H. H. Dr. Jayant Balaji Athavale. The complainant had stated that she was spiritually evolved and followed the path of Gurukrupayoga which prescribes chanting the name of God, Satsang, Seva, Sacrifice and Priti and that she was performing as part of services of her spiritual practice, divine services as per the guidance of her spiritual guide, the said Dr. Jayant Balaji

Athavale and whatever information or knowledge of the subtle world is gained by her with the grace of her guru from the Almighty God is published in the daily Sanatan Prabhat Weekly for the information and guidance of the seekers throughout the world and as such she had earned a high reputation in the Society in general and thousands of seekers in particular.

4. The subject matter of the complaint was an article published on daily "Janadesh" dated 20-2-2005 under the caption "Swayamghoshit Param Pujya Athavale Yanchya Premila"(Love-play of self-proclaimed P.P. Athavale). As per the complainant, the said Janadesh dated 20-2-2005 was sent to the complainant by one of her unknown well wishers in the last week of May, 2005 and had pointed out to her the said defamatory news and expressed surprise over the said news, which she came to know at Ponda, at her residence. The complainant produced the said issue of Janadesh dated 20-2-2005 along with her complaint.

5. After recording the complainant's statement on oath, on 28-6-2005 and the statement of one Anil More, the learned

J.M.F.C., Ponda was pleased to issue process against the accused, by Order dated 6-7-2005.

6. The accused assailed the said Order in revision before the Court of Sessions, Panaji and the learned Additional Sessions Judge by her Order dated 12-4-2006 set aside the Order dated 6-7-2005 and consequently dismissed the complaint observing that no sufficient grounds were made out by the complainant to proceed against the accused for having committed the offence under Section 500 I.P.C.

7. In quashing the process, the learned Additional Sessions Judge observed that although the complaint was filed on the basis of defamatory statements having been made against her on daily Janadesh dated 20-2-2005, the defamatory statements were not reproduced in the complaint. The learned Additional Sessions Judge also held that it would have been in the interest of the complainant in case of this nature to get a proper adjudication from the Court that as far as possible the words spoken or the statements made and which were alleged to be defamatory were before the Court and that even from the

point of view of the accused it was necessary that the matters alleged to be defamatory in the complaint ought to have been so stated so as to enable the accused to know the nature of the allegations which he would have to meet. The learned Additional Sessions Judge also observed that the complainant had averred in the complaint as well as in her statement on oath that the accused with the intention to defame the complainant had written the news article under the caption on the said daily "Janadesh" dated 20-2-2005 without in any way stating as to in what context the said article was written vis a vis her involvement.

8. The learned Counsel on behalf of the complainant submits that the learned Magistrate had issued process against the accused after considering the material placed before him and his discretion in issuing the process could not be questioned in a revision petition. In support of the submission, the learned Counsel has placed reliance on two decisions of the Apex Court. The first is in the case of **Nirmaljit Singh Hoon** v. **The State of West Bengal**(AIR 1972 SC 2639) wherein the Apex Court stated that the expression "sufficient ground" used in Section 203

means the satisfaction that a prima facie case is made out against the person accused, by the evidence of witnesses entitled to a reasonable degree of credit, and do not mean sufficient ground for the purpose of conviction. The test is whether there was sufficient ground for proceeding and not whether there is sufficient ground for conviction and where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of process could not be refused and unless the Magistrate finds that the evidence led before him is self-contradictory or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. In a revision against such a refusal, the High Court also has to apply the same test.

9. The second is in the case of **Smt. Nagawwa** v. **Veeranna Shivalingappa Konjhalgi and others**(AIR 1976 CRI.L.J. 1533) wherein the Apex Court has again observed that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima

facie satisfied whether there are sufficient grounds for proceeding against the accused. The scope of the inquiry under Section 202 is extremely limited - only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

10. On the other hand, the learned Counsel on behalf of the accused, has submitted that the said article under the said caption nowhere reflects the name of the complainant, as given in the complaint, and the reference to one Anjalibai in the article need not necessarily refer to the complainant and there could be many Anjalis not only in Thane where the said daily Janadesh is published but also at Ponda where the complainant resides. The learned Counsel further submits that the caricatures also do not resemble the complainant and it is not her case that the caricatures resemble her. The learned Counsel

further submits that as the very caption of the article shows, it refers to P.P. Athavale and it is only he that could have filed the complaint. Reliance has been placed on **Virendrabhai M. Chandalia and another** v. **Mohan Kanayalal Parwani and another**(2003 ALL MR(Cri.) 2029) wherein this Court in para 6 observed as follows:-

> "Section 499 gives the definition of defamation which is punishable under Section 500 of IPC which requires that the accused should by words either spoken or intended to be read or by signs or by visible representations, should make or publish any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation would harm, the reputation of such person. Here, in the complaint which has been filed by respondent no.1, no such allegation has been made. It has not been averred by the respondent no.1 that the said spoken imputations were intending to harm his reputation or the petitioners were knowing or having reason to believe that such imputation would harm his reputation. Thus no offence punishable under Section 500 is spelled out".

11. A reading of the said article shows that it was written in defence of Param Pujya Todkar Maharaj after an article written by one Anjali appeared on Sannata Prabhat in relation to a molestation incident in which the said Todkar Maharaj was allegedly involved. In that article, one Anjalibai is stated to have been very close to and favourite of Dr. Athavale and her voice is actually that of the said Param Pujya Athavale. The said article also gives an impression that the followers of the said Todkar Maharaj were upset by Anjalibai's article in Sannata Prabhat and it is stated that Dr. Athavale also conducts spiritual remedies in his ashram like Todkar Maharaj and many unmarried girls reside in Dr. Athavale's ashram etc. It is also stated that Dr. Athavale hugs the girls, diagnosis the illness by touch method which could not be called molestation. It seeks to explain that there was no such incident of molestation.

12. The law regarding quashing of criminal complaints or process issued is well settled from the time of **R. P. Kapur** v. **State of Punjab**(AIR 1960 SC 866) to **State of Haryana** v. **C. H. Bhajan Lal and others**(AIR 1992 SC 604) to **M. Krishnan** v.

Vijay Singh and another(AIR 2001 SC 3014) wherein the Apex Court has stated that the revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value or accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or the complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused or the allegations are so absurd and inherently improbable that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private or personal grudge.

13. Although the article is captioned "love play of self proclaimed P. P. Athavale", P. P. Dr. Athavale has himself not filed a case of defamation but it is the complainant who has filed the same. It is not the case of any of the seekers of Dr. Athavale that on reading the said article they found that Anjalibhai referred to therein referred to the complainant. The entire case of the complainant has been that the issue of Janadesh dated 20-2-2005 was sent to her at Ponda by one of her unknown well wishers and that she has been defamed. As already seen, the article is broad based and also referred to Param Pujya Dr. Athavale and to Anjalibai. As per the complainant, the accused has made defamatory statements against the complainant intentionally to harm her reputation, and, in such a situation it was necessary for the complainant to have picked up from the said article which of the statements were defamatory and reproduce them in the complaint and thereafter verify them in the statement on oath. The accused was certainly entitled to know, for his defence, specifically which words or which statements in the said article were defamatory of the complainant. It was not enough merely to state that by the said article the complainant was defamed. In other words, the

complainant had to disclose which are the offending words or passages which defamed her. The conclusion of the learned Additional Sessions Judge that the complainant was required to reproduce the defamatory statements not only in the complaint but also in the statement on oath of the complainant both in the interest of the complainant as well as in the interest of the accused and in the case of the latter to enable the accused to know the nature of the allegations could not be faulted. When an article in which two religious heads were involved, it was all the more necessary for the complainant to have extracted as to which parts of the said articles were defamatory of her and having not done so, in my view, no process could have been issued.

14. There is another aspect which is required to be looked at. In the said article who has been referred to is one Anjali of Sanatan Saunstha and it is the case of the complainant herself that the said article is defamatory of her but her own opinion is not of any relevance and what is of relevance is the opinion of other persons since reputation implies the good opinion of others so that an opinion which affects one's reputation is

relevant not because it is opinion but because it is necessary to establish the criminality of the act complained of. It was certainly not the case of Anil More that he had read the said article and that it referred to the complainant or for that matter after the reading of the said article he found that the complainant was defamed in any manner or he had found any of the statements defamatory of the complainant. No process could have been issued on the bare allegation of the complainant that the statements contained in the said article were generally defamatory of her without showing as to which parts of the said statements were in fact defamatory of her.

15. The process was issued by the learned J.M.F.C., Ponda. There was no averment in the complaint as confirmed in the statement on oath that the said daily Janadesh was published or circulated in the jurisdiction of that Court and what the complainant had stated was that she had received a copy of it through one of her unknown well wishers. If the said Janadesh was published in Thane at Mumbai and was otherwise not shown to be in circulation in Ponda, the offence would have been completed in Thane, Mumbai and not in Ponda, where it was

published. The imputation charged as defamatory must have been either made or published within the territorial jurisdiction of the Court taking cognizance of the offences. In this view of the matter also, the learned J.M.F.C., Ponda could not have jurisdiction to entertain and proceed with the complaint. The complaint if any had to be filed at Thane, Mumbai where the defamatory article was published. A copy of Janadesh having been sent to the complainant herself does not amount to publication at the place where it was received by the complainant herself.

16. As a result of the above discussion, in my view, the conclusion arrived at by the learned Additional Sessions Judge could not be faulted. There is no merit in this revision. Consequently, the same is hereby dismissed, with costs.

N. A. BRITTO, J.

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